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No. 525

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

RALPH BECKER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

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OPINIONS BELOW.

No opinion in District Court. Opinion of Court of Appeals for Eighth Circuit not yet reported. It appears in certified copy of record filed herein (R. pp. 61-66) and in Appendix hereto (p. i).

JURISDICTION OF SUPREME COURT.

Review is sought of judgment of U. S. Court of Appeals Eighth Circuit dated December 17, 1954, and entered December 17, 1954.

28 U. S. C., Sec. 1254 (1), confers upon this court jurisdiction to review the judgment referred to by writ of certiorari.

QUESTION FOR REVIEW.

Where the evidence is undisputed that a female living in an illicit relationship with petitioner in Wisconsin makes an interstate trip to Minnesota for the entirely innocent purpose of spending the Thanksgiving holidays at home with her infant daughter and with the undisputed intention of returning to Wisconsin after such holiday, is other evidence in the case, to-wit: testimony by the female that while she was in Minnesota on such trip petitioner telephoned her and begged her to return—asked "when" she was going to return—that she should return "quick" because he loved her and could not get along without her, etc., and hearsay testimony by the female's booking agent that he believed the female telephoned him around Thanksgiving and seemed uncertain whether she wanted to return to Medford, also that petitioner telephoned him before Thanksgiving and asked if she was coming back to work and he told petitioner he didn't know because he had no definite understanding with her, sufficient to permit the jury to find beyond a reasonable doubt that the female's return trip to Wisconsin was not in accordance with her original intention to return but was in pursuance to persuasion by the petitioner so as to distinguish the case from Mortensen v. U. S., 322 U. S. 369, and support a conviction under the White Slave Traffic Act.

STATUTE INVOLVED.

18 U. S. C., Sec. 2422 (White Slave Traffic Act).

(See Text of Act set forth in
Appendix attached.)

P. VII

STATEMENT OF THE CASE.

Petitioner was convicted after jury trial in the U. S. District Court for the District of Minnesota of transporting Lila Lane in interstate commerce from Minneapolis, Minnesota, to Medford, Wisconsin, on or about November 27, 1953, in violation of the White Slave Traffic Act. 18 U. S. C., Sec. 2422. Jurisdiction in the U. S. District Court rested on violation of a Federal Penal Statute. The U. S. Court of Appeals for the Eighth Circuit affirmed the judgment of conviction.

From November 2 to November 23, 1953, Lila Lane was performing as an exotic dancer at petitioner's hotel in Medford, Wisconsin, under contract entered into with petitioner through Consolidated Artists Corporation (Joe Billo, Manager) (R. 2). During this period she committed acts of prostitution with two men procured for her by petitioner (R. 3).

About November 23rd she left Medford on a trip to Minneapolis (R. 9, 10). The Court of Appeals in its decision concedes that the sole purpose of this trip was to be at home with her two-year-old daughter over the Thanksgiving holiday and that "**the evidence was also undisputed that when Lila Lane left Medford to go to Minneapolis she intended to return to Medford**" (R. 62).

Miss Lane testified when she got back to Minneapolis petitioner telephoned her. He begged her to come back and said he loved her, couldn't live without her and all that—that she just had to come back (R. 4).[1] But on

[1] At another point she said she received telephone calls when she was in Minneapolis in December prior to December 14th. In these talks petitioner begged her to come back, said he loved her and promised both her mother and her the world with a fence around it (R. 13). It is not clear if she meant petitioner's begging her to come back, protestations of love, etc., relate only to these December calls or also the earlier Thanksgiving trip calls. At any rate, the promises in respect to her mother did NOT occur in the Thanksgiving calls (which affect the trip in question), as the Court of Appeals assumes.

cross-examination in discussing these phone calls she said when petitioner called her he wanted to know "when" she was coming back and she told him after Thanksgiving (R. 8—2nd Par.). Also on redirect examination she said he wanted her to come back "quick," that he loved her (R. 17).

Billo, the booking agent, testified he received $32.00 in commission up to November 28th, but none after that. He said he **believed** he talked to Miss Lane when she was in town around Thanksgiving and she didn't know whether she wanted to go back or not and that so far as he knew or was concerned their contract was terminated when the commission ceased (R. 22). On cross-examination he admitted when Miss Lane came back to Minneapolis she at no time definitely told him her engagement at Medford was ended (R. 24). That it was in December that she asked him if he could book her somewhere else (R. 24). He testified also that if Lila Lane was off for a week from November 23rd the agency definitely would not expect any commission for her (R. 24).

Lila Lane testified she never at any time when she came back to Minneapolis went to Billo or the agency and told them her contract at Medford was ended. She said there was never any necessity of asking for a new booking until she was fired December 15th. She considered her contract in force until then (R. 17).

Billo also testified when Lila Lane came back between November 2nd and 28th petitioner called and asked Billo if she were coming back to work. Billo said he didn't know because he hadn't had a definite understanding with Lila whether she was going back or not—she was uncertain herself. Then petitioner asked if he could get him somebody else. He thought that would be just before Thanksgiving. He said that was the end of her engagement as far as he was concerned (R. 22).

ARGUMENT.

It is important that this court review the judgment of the Court of Appeals herein because the decision of that court places an interpretation on the White Slave Traffic Act (18 U. S. C., Sec. 2422) which is in direct conflict with the decision of this court in Mortensen v. U. S., 322 U. S. 369, and Oriolo v. U. S., 324 U. S. 824. If the judgment of the Court of Appeals remains unreversed it will result in the loss of petitioner's liberty (one year sentence) and in the imprisonment of many persons involved in circumstances which have not heretofore constituted a violation of this statute under those decisions of this court or the Courts of Appeals in other circuits, i. e. (Fisher v. U. S. [C. C. A. 4th], 266 Fed. 667; Smart v. U. S. [C. C. A. 5th], 202 Fed. [2] 874).

In the **Mortensen** case this court held that where:

> (1) An illicit relationship exists between a female and defendant in state A;
>
> (2) The female makes a trip to state B for an entirely innocent purpose and when she departs has the fixed intention of returning to state A;
>
> (3) The female does return to state A and the illicit relationship is resumed;

there could be no conviction under the White Slave Traffic Act based upon the **return** trip to state "A" in the absence, at least, of a showing of a change in the purpose of the trip. This is the rule applied by the Court of Appeals, Fourth Circuit, in Fisher v. U. S., 266 Fed. 667, and the Court of Appeals, Fifth Circuit, in Smart v. U. S., 202 Fed. (2) 874.

The obvious reason for the rule is that, in such circumstances, the interstate trip cannot be the "cause" of the illicit relationship. This already existed. The trip is only

incidental to it. This court pointed out in the **Mortensen** case that such a round trip could not be split in two so as to make the outgoing trip innocent and the return trip criminal. It is the "intent to return" which exists at the outset which makes such a trip a round trip.

In the **Oriolo** case defendant transported the female by automobile from Philadelphia to Atlantic City, New Jersey for a day's outing. In Atlantic City his automobile was impounded by the authorities and he was fined $500.00. While they were on the train in Atlantic City returning to Philadelphia he told the female she would have to return to Philadelphia and resume prostitution to get the money to pay his fine. The Circuit Court of Appeals (Third Circuit) held this circumstance indicated a sufficient change in the purpose of the journey to sustain a conviction based on the return trip from Atlantic City to Philadelphia.

This court granted certiorari and reversed the judgment on the authority of the **Mortensen** case.

In Smart v. U. S. (C. C. A. 5th), 202 Fed. (2) 874, the situation was similar to the case at bar. Defendant employed two prostitutes in Galveston, Texas. He transported them to Louisiana for a wholly innocent purpose, returning to Galveston, Texas, the same day. The District Court sustained a conviction based on the return trip from Louisiana to Texas. The Fifth Circuit Court of Appeals reversed the conviction on the authority of the **Mortensen** case **stressing the fact that when the defendant and the two girls left Galveston there was no doubt of their return.**

Fisher v. U. S. (C. C. A. 4th), 266 Fed. 667, also involved a round trip where the government sought to base a conviction on the return portion of the trip. The Fourth Circuit Court of Appeals reversed the District Court judg-

ment of conviction on the ground that when the female set out on the interstate trip **she obviously intended to come back.** The Court of Appeals said further:

> ". . . The crossing into Ohio and returning on that occasion was a mere incident of their association, which did not bring about or in any way contribute to the immoral conduct that followed.
>
> "We are convinced that a violation of the statute cannot be predicated upon such incident. Granted that he may have had in mind at the time that he would continue to do what he had been doing, it does not follow and cannot in reason be held that this trip was the interstate transportation of the girl for the purpose of engaging in immoral practices. It was not a means to that end, and therefore not of itself a violation of the statute" (pp. 669, 670).

Case at Bar.

In this case the Court of Appeals in its opinion admits that the evidence is undisputed that the purpose of Miss Lane's trip to Minneapolis was entirely innocent and that "the evidence was also undisputed that when Lila Lane left Medford to go to Minneapolis she intended to return to Medford" (R. 62, Appdx. p. i).

It seeks to distinguish this case from **Mortensen, Oriolo** and the other cases on the ground there is other evidence in this case which entitled the jury to infer that Miss Lane in fact made the return trip to Wisconsin in pursuance to persuasions by the defendant and not in pursuance to her declared intention to return.

This conclusion is reached despite the fact there is no relevant evidence in the case upon which a jury could find or infer that Lila Lane ever changed or abandoned her original intention of returning to Medford after

Thanksgiving. The evidence relied on consists of phone calls made by petitioner to Miss Lane while she was in Minneapolis over Thanksgiving and to Billo, the booking agent, during the same period.

In the calls to her Miss Lane says petitioner begged her to come back—that he loved her—could not get along without her, etc. But in discussing these calls on cross-examination she says when petitioner called her he wanted to know "when" she was coming back (R. 8), and wanted her to come back "quick" (R. 17). When petitioner asked her "when" she was coming back she told him "after Thanksgiving." She also testified that her sole purpose in returning was to continue on her contract (R. 9).

Such calls inquiring "when" she will return, etc., cannot, in the face of the overwhelming and undisputed proof that she always intended to return, her reaffirmation on the telephone that she would return after Thanksgiving, and her declaration that her **sole** purpose in returning was to continue her contract, support a finding **beyond a reasonable doubt** that she abandoned her original intention and returned because of petitioner's persuasions.

The Court of Appeals based its decision in part also on the testimony of the booking agent, Billo. In this we respectfully submit it was in grave error. This testimony so far as it could bear upon the point was hearsay and otherwise of no value.

Billo testified he received $32.00 in commissions (4 weeks at $8.00 a week) up to November 28th. So far as **he** was concerned Miss Lane's engagement was terminated about that time. But Miss Lane testified positively that she had extended her contract from week to week past Thanksgiving, as she had a right to do (R. 9; see Contract Appendix p. viii), and she considered it in force until

December 15th when she was fired (R. 17), and it in fact would be in force until December 5th even so far as payment of commissions to the agency was concerned.[2]

He said he **believed** he talked to Miss Lane on the phone when she was in town around Thanksgiving and she didn't know whether she wanted to go back or not. **This is only hearsay at best.** But Miss Lane said she never at any time when she was in Minneapolis went to Billo or the agency and told them her contract at Medford was ended until December 15th (R. 17). Billo on cross-examination admitted Miss Lane at no time when she was in Minneapolis definitely told him her engagement at Medford was off (R. 24).

Billo's telephone talk with defendant amounted to no more than defendant's inquiry as to whether Miss Lane was coming back. When Billo said he didn't know defendant asked him if he could get somebody else. **There is no evidence this conversation was ever disclosed to Miss Lane.** It could have no bearing whatever on her intention to return to Medford in pursuance to her original plan.

In the **Oriolo case** it would appear some plausible argument could be made to the point that the arrest and fine in New Jersey introduced a new factor into the case which would justify the inference the return trip to Philadelphia now had a **new purpose,** to-wit, prostitution, to earn the $500.00 fine. However, this court refused to permit such legal hair-splitting and reversed the judgment on authority of the **Mortonsen** case.

In this case there is absolutely no relevant or valid evidence upon which it can be found or inferred beyond a

---

[2] $24.00 paid his commission from commencement of the engagement, November 2nd, to November 23rd when she left for Minneapolis (3 weeks at $8.00 per week). He was not entitled to commission when she was not working (R. 24). If she returned November 28th he was in fact paid until December 5th.

reasonable doubt that Lila Lane ever changed her plan or purpose in going to Minneapolis and back. In the words of the **Mortensen** case her trip if innocent when it began remained so until it ended. To permit the inference she returned for reasons other than the fulfillment of her original plan and intention would result in a verdict based upon sheer speculation and not evidence. To permit this judgment to stand would be to torture the intent and purpose of the White Slave Traffic Act.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

LEONARD W. SCHMITT,
Counsel for Petitioner.

January 10, 1955.

APPENDIX "A."

OPINION OF UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Before Sanborn, Woodrough and Van Oosterhout, Circuit Judges.

Woodrough, Circuit Judge.

The appellant, Ralph Becker, was convicted and sentenced under Count Two of a three-count indictment charging him with violation of the Mann Act, 18 U. S. C. A., section 2422, in inducing the transportation of one Lila Lane as a passenger upon the line of a common carrier in interstate commerce from Minneapolis, Minnesota, to Eau Claire, Wisconsin, and thence by automobile to Medford, Wisconsin, for the purpose and with the intent denounced in the Act.

As stated in the brief for Becker, "The principal contention of the appellant on this appeal is that the trip made by the female in question, to wit, the trip of Lila Lane from Minneapolis, Minnesota, to Medford, Wisconsin, on or about November 27, 1953, was her return on a 'round trip' from Medford, Wisconsin, to Minneapolis, Minnesota, and return; that the outgoing part of the trip from Medford, Wisconsin, to Minneapolis, Minnesota, was for an innocent purpose; that when she left Medford for Minneapolis she intended to return; that the return trip could not, therefore, be criminal and that the case is controlled by Mortensen v. U. S., 322 U. S. 369, and other cases" (meaning Oriolo v. U. S., 324 U. S. 824; Fisher v. U. S., 266 Fed. 667, and Smart v. U. S., 5 Cir., 202 F. 2d 874).

The evidence on the trial was undisputed that Lila Lane had been in the town of Medford, Wisconsin, prior to the

transportation charged in Count Two of the indictment and that her purpose in going from there to Minneapolis was to be home for Thanksgiving and to see her two-year-old daughter, who lived in that city with Lila's mother. The evidence was also undisputed that when Lila Lane left Medford to go to Minneapolis she intended to return to Medford.

The case therefore parallels the Mortensen case to the extent that in both cases the transportation in issue was the return on a trip that was begun by a woman with the intention of going across state lines and coming back across them to the starting place.

But it appeared in the Mortensen case and the rationale of the decision there was that the whole trip upon which the women were transported across state lines by the defendants in their automobile was a vacation trip undertaken and consummated by all the parties to it as an innocent integrated transaction. Under the circumstances there present the Supreme Court declared that "the return journey * * * cannot be considered apart from its integral relation with the innocent round trip as a whole. There is no evidence of any change in the purpose of the trip during its course." The Supreme Court said of the return journey to Grand Island, Nebraska, where the trip had begun: "It differed in no respect from the other part, except in the direction of travel. That is not enough to make the first part innocent, the last part illegal. Criminal intent and purpose must be grounded on something less ingenious than that which is necessary to sustain a finding of such a purpose in making the return interstate journey to Grand Island."

It appeared to the trial court that in the case at bar the return trip which Lila Lane made from Minneapolis to Medford across state lines was not, as a matter of law, of

the same innocent character as the return part of the vacation trip in the Mortensen case. In full recognition of the decision in that case the court instructed the jury: "If an interstate journey is planned and made without immoral purpose in mind at the time, no crime is committed." But whereas the return of the women to Grand Island in the Mortensen case appeared to have proceeded directly and without other inducement upon the plan and intention of all the parties formed at the outset of the vacation trip, and their whole trip "was planned and made without immoral purpose in mind," the court considered that in the present case the evidence permitted a different inference to be drawn by the jury.

Here the evidence was that Lila Lane obtained employment as an exotic dancer at defendant's hotel and bar room in Medford, Wisconsin, through a Minneapolis booking company at a salary of eighty dollars a week with room in the hotel and board. She performed her act there from November 2, 1953, until a few days before Thanksgiving (which fell on November 26). She then made the trip to Minneapolis for the purpose above stated and when she started from Medford she intended to return to that place. She left her dancing equipment in Medford with another exotic dancer whom defendant employed to carry on in her place. She testified that her dancing contract was not cancelled or terminated and had been extended by her and appellant to a period past Thanksgiving. But there is no evidence that she had a round trip ticket and she was not shown to have set or to have had in mind any date for her return to Medford. When she was in Minneapolis she telephoned the booking agent who had obtained her dancing contract. The agency was entitled to a ten per cent commission on her dance earnings which was paid up to November 28th. The agent testified that she told him that she did not know whether she wanted to go back or was going back at that time or any more. He

also said "that was the termination of our contract" "so far as our agreement and our contract was concerned, that was its termination."

He also testified that the defendant called him by phone concerning Lila Lane and asked if she was coming back to work. The agent replied "I didn't know at the time because I hadn't had a definite understanding with Lila whether she was going back or not, she was uncertain herself." "So then (defendant) asked if I could get him somebody else."

The record then shows that the defendant telephoned Lila Lane at Minneapolis more than once. Though he was married and had two children he made protestations of love and desire for her and "begged her to come back and said he couldn't live without her, and all that, and that she just had to come back." "He promised to support both her mother and herself."

The defendant refrained as he had the right to do from taking the witness stand in his own behalf and the testimony as to his conduct towards Lila Lane after she went back to Medford came mainly from her. It fully sustained the charge of the indictment as to his purpose and intent in inducing her to make the railroad journey to him in interstate commerce. He paid the cost of her journey on the railroad to Eau Claire and $15.00 for the taxicab from there to Medford.

We hold that the evidence did not establish as a matter of law that Lila Lane returned to Medford from Minneapolis solely in pursuance of the intention to return with which she had started from Medford but that it was for the jury to say whether or not the defendant had knowingly induced her by his persuasions and enticements to go in interstate commerce to Medford for the purposes and with the intent on his part as charged in the indict-

ment. The case presented by the evidence was plainly distinguishable from Mortensen v. U. S., supra, and the dependent cases.

In addition to his principal contention appellant has also argued that the court erred in the admission and rejection of evidence and in its attitude and remarks during the trial but our examination of the record has convinced that these contentions are without merit. We think there was no testimony prejudicial to defendant erroneously admitted and none helpful to his defense erroneously excluded. The judgment is therefore Affirmed.

A true copy.

Attest.

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX "B".

(JUDGMENT.)

United States Court of Appeals
for the
Eighth Circuit.

No. 15132—September Term, 1954.

Friday, December 17, 1954.

Ralph Becker, Appellant,

vs.

United States of America.

Appeal from the United States District Court for the District of Minnesota.

This cause came on to be heard on the record from the United States District Court for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment and sentence of the said District Court, in this cause, be, and the same is hereby, affirmed.

And it is further Ordered by this Court that the defendant in the said District Court, Ralph Becker, do surrender himself to the custody of the United States Marshal for the District of Minnesota, if not now in custody, in execution of the judgment and sentence imposed upon him, within thirty days from and after the date of filing of the mandate of this Court in the said District Court.

December 17, 1954.

APPENDIX "C".

STATUTES INVOLVED.

18 U. S. C., Sec. 2422.

(White Slave Traffic Act.)

Coercion or Enticement of Female.—Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000.00 or imprisoned not more than five years, or both. (June 25, 1948, c. 645, Sec. 1, 62 Stat. 812.)

APPENDIX "D."

PLAINTIFF'S EXHIBIT III.

(Contract between Consolidated Artists Corporation, defendant Becker and Lila Lane under which defendant booked Lila Lane to perform at his hotel—all formal and immaterial parts omitted.)

Agreement made this 28th day of October, 1953, Between Lila Lane, Artist, and New Fayette Hotel, Operator. The operator here engages the Artist to render services as exotic dancer. No. of people in Act one (1). Report to Mr. Ralph Becker. Date of Engagement one week with option, starting November 2, 1953, inc. Place of Engagement New Fayette Hotel, Medford, Wisconsin. Address, City and State Medford, Wisconsin. Rehearsal ..... No. of Shows House Policy Days Weekly Seven (7) Salary $80.00 per week, plus room and meals.

Artist Agrees to Pay "Consolidated Artists Corp." 10% Commission on This Agreement Promptly at Expiration of This Engagement.

1. Artist hereby gives and grants to Operator the option of extending this agreement by mutual consent consecutive additional periods of ..... (.....) consecutive weeks each, immediately following the conclusion of the original engagement hereunder, upon the same terms and conditions as contained herein for the original period hereof. The weekly payment during each option period shall be ..... Dollars ($.....). Each of these options to be effective must be exercised in writing by the Operator not later than four days (days) prior to the termination of each preceding period. (Note: On engagements for one week or less AGVA Rules require at least three days' written notice—on engagements of more than one week the Rules require at least one week's written notice.)